UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

AMICUS TRADE AB and STORE SOLUTIONS, L.L.C. d/b/a EASYKLIP Plaintiffs, v. WINSTON PRODUCTS LLC and WINSTON BREEDEN, III Defendants.	§ § § § § § § § § § § § § § § § § §	Case No. 1:16-cv-06303 The Honorable Elaine E. Bucklo

REPORT OF THE PARTIES' PLANNING MEETING

Defendants respectfully submit this supplemental Report of the Parties' Planning Meeting because Plaintiffs' counsel informed Defendants at approximately 10PM EST on September 19, 2016, that it would not be including Defendants' position under Section 5(a).

1. The following persons participated in Rule 26(f) conference on Tuesday, August 23, 2016 by telephone:

   Counsel for Plaintiffs:
   David Hurley of Knechtel, Demueur & Samlan
   Louis Alex of Cook Alex Ltd.

   Counsel for Defendants
   Josh Ryland and Marissa Ennis of Tucker Ellis LLP

2. **Initial Disclosures.** The parties will complete by 10 days after Defendants answer the complaint the initial disclosures required by Rule 26(a)(1).

3. **Disclosures and Discovery Pursuant to Local Patent Rules**. The parties acknowledge that the requirements of the Local Patent Rules apply to this case. Defendants have not yet answered the complaint. The parties agree to proceed in accordance with the schedule set forth in the Northern District of Illinois Patent Rules commencing with LPR 2.1 Initial Disclosures fourteen (14) days after the last Defendant files its answer to the complaint. Pursuant to LPR 1.3, fact discovery in this Action shall commence on the date for LPR 2.1 Initial Disclosures.

4. **Additional Discovery Plan**. The parties propose the following in addition to the discovery plan and schedules addressed in the Local Patent Rules:

   a. Each party may serve on any other party no more than 25 written interrogatories. Responses to interrogatories shall be due in accordance with the Federal Rules of Civil Procedure and Local Patent Rules for the Northern District of Illinois.
   b. The parties may serve requests for admission on any other party in accordance with the Federal Rule of Civil Procedure and the Local Patent Rules for the Northern District of Illinois.
   c. Absent further agreement by the parties, the parties agree to the following:
      i. Each party may conduct a maximum of 10 factual depositions.
      ii. Each factual deposition will be limited to a maximum of 7.5 hours of time for questions and answers.
   d. Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.

5. Other Dates:

a. Plaintiffs: With respect to the prospects for settlement, previous efforts to settle this dispute have been unsuccessful. Defendants' counsel produced certain sales and bill of lading materials concerning accused products. Plaintiffs' counsel are reviewing these materials. The Parties have not yet determined whether this dispute can be settled.

Defendants: While Defendants deny infringement, Defendants have attempted to resolve the matter through negotiations because the cost of litigating even the earliest stages of the case will outweigh any available damages award. The ***total gross sales*** of allegedly infringing products is approximately $46,819.50—almost entirely from a ***single sale*** to a big-box retailer. These sales occurred prior to the Complaint, and almost all product was shipped and sold prior to any actual notice of the patents alleged. In an abundance of caution, Defendants have designed around the claimed invention and provided that design around documentation to Plaintiffs. Defendants have also produced all bills of lading, shipping manifestos, and invoices verifying the sales and product shipped in an effort reach an amicable resolution. Plaintiffs, however, persist in making settlement demands ***in excess of the total gross sale***s, a figure that is wholly contrary to law governing the calculation of either lost profits or reasonable royalty damages. This is particularly troubling given that the entity that owns the asserted patents is not the same entity making and selling products in the United States. Moreover, Plaintiffs appear to contend that they have not received all sales information but they have yet to identify any other allegedly infringing sales aside from those for which they requested (and received) documents.

At the same time Defendants provided the documents Plaintiffs requested, Plaintiffs have continually failed to provide any of the basic ownership, assignment, and license documentation requested by Defendants. Indeed, at the time of the notice letter referenced and attached to the Complaint, the Plaintiffs' lacked standing to assert the patents as alleged.

Accordingly, Defendants believe there is an ***immediate*** need for the Court's intervention to facilitate rationale settlement discussions, as the costs of litigating not only exceed the ***total universe of sales*** but far exceed any possible damages available to Plaintiffs.

b. The parties shall provide any supplementation required by Rule 26(e) as soon as practicable.

c. The parties are not able to propose a date for a pretrial conference at this time.

d. Plaintiffs shall have until January 23, 2017 to amend the first amended complaint or to join parties.

e. Defendants shall have until January 23, 2017 to amend its answer or to join parties.

f. The final dates for submitting Rule 26(a)(3) witness lists, designation of witnesses whose testimony will be presented by deposition, and exhibit lists shall be ninety (90) days after the deadline for dispositive motions, or if none are filed, sixty (60) days after the close of Expert Discovery.

g. Objections under Rule 26(a)(3) shall be filed twenty-one (21) days after Rule 26(a)(3) disclosures are made.

6. Other Items:

a. The parties believe that alternative dispute resolution procedures might enhance settlement prospects after discovery has commenced and depositions are conducted.

b. Communications between a party's attorney and a testifying expert relating to the issues on which he/she opines, or to the basis or grounds in support of or countering the opinion, are subject to discovery by the opposing party only to the extent provided in Rule 26(b)(4)(B) and (C).

c. In responding to discovery requests, each party shall construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term in its response, and limiting the response to that definition.

d. The parties agree the video "An Introduction to the Patent System" distributed by the Federal Judicial Center, may be included among the materials shown to the jurors in connection with its preliminary jury instructions.

e. Expert Witnesses: the parties anticipate that they will require expert witnesses at time of trial.

    i. Each party shall be entitled to a maximum of three experts.

    ii. By the close of fact discovery, the parties shall identify to the opposing party the experts who will provide a report that deals with the issues on which that party has the burden of persuasion.

    iii. Within 60 days after the close of fact discovery, the parties shall exchange initial expert reports, which reports shall comply with Fed. R. Civ. P. 26(a)(2)(B) ("Initial Expert Reports"). The Initial Expert Reports from each party shall deal with the issues on which that party has the burden of persuasion.

    iv. Within 30 days after the Initial Expert Reports are exchanged Rebuttal Expert Reports shall be exchanged. Rebuttal Expert Reports shall also comply with Fed. R. Civ. P. 26(a)(2)(B).

    v. Each party may conduct a deposition of another party's experts. Each expert deposition will be limited to a maximum of 7 hours of time for questions and answers.

    vi. All expert discovery shall be completed within 60 days of the exchange of Rebuttal Expert Reports.

Dated: September 19, 2016

Respectfully submitted,

s/ James Mizgala

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Attorneys for Defendants Winston Products LLC and Winston Breeden, III

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2016, the foregoing **REPORT OF THE PARTIES' PLANNING MEETING** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

*s/ James Mizgala*____________________________
James Mizgala
An attorney for Winston Products, LLC, and Winston Breeden, III